IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Civil Action No. 52 C 1639

UNITED STATES OF AMERICA, PLAINTIFF

v.

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; LOCAL NO. 74 OF WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; HARRY D. FOLLETT; AND EDWARD D. CHOUINARD, DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on July 20, 1953. A petition for appeal is presented to the district court herewith, to wit, on September 18, 1953.

OPINION BELOW

The opinion of the district court for the Northern District of Illinois is not yet reported. A copy of the opinion is attached hereto as Appendix A.[1]

[1] The court's opinion also covers a related civil case (*United States* v. *Employing Plasterers' Association of Chicago, et al.*, Civ. No. 52 C 1640) in which the United States is concurrently

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U.S.C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Women's Sportswear Mfg. Assn.*, 336 U.S. 460;

United States v. *New Wrinkle, Inc.*, 342 U.S. 371.

QUESTION PRESENTED

The complaint charges the defendants with conspiring to limit those who may engage in the business of lathing contracting in the Chicago area, which business consists of furnishing and installing, pursuant to sub-contracts with plastering contractors, lathing materials in buildings. The complaint alleges that the major part of the materials purchased and installed by the lathing contractors in the Chicago area are shipped from outside the state for use in such installation; that substantial quantities of the materials so shipped and installed are purchased by building material dealers in re-

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petitioning for appeal, and two criminal proceedings, which respectively parallel the two civil cases. The judgments of dismissal in the criminal cases have been appealed to the Court of Appeals for the Seventh Circuit, but these appeals will be held in abeyance pending determination of the civil appeals.

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sponse to prior orders from plastering contractors, who deliver the materials to the lathing contractors for installation; that substantial quantities of the materials purchased by plastering contractors through building material dealers are shipped from out-of-state sources directly to the job site for delivery to lathing contractors; that the foregoing lathing materials flow in a continuous, uninterrupted stream from outside the state to the places of installation in the Chicago area; that the services performed by lathing contractors are an integral part of, and necessary to, this continuous interstate movement; and that restraint upon and interference with the business of lathing contracting in the Chicago area affects, burdens and restrains this interstate movement.

The question presented is whether such allegations show that the conspiracy charged against the defendants restrained or monopolized commerce which is interstate, so as to bring defendants' conduct within the prohibitions of the Sherman Act.

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2, and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U.S.C. 1, 2, 4) commonly known as the Sherman Act, are as follows:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every

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person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.

* * * * *

Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

This is a civil action brought by the United States under Section 4 of the Sherman Act against Employing Lathers Association of Chicago and Vicinity (the "Association"), Local No. 74 of Wood, Wire and Metal Lathers International Union of Chicago and Vicinity ("Local 74"), Harry D. Follett, and Edward D. Chouinard. The Association is an incorporated trade association, organized in Illinois, whose membership consists of 16 lathing contractors doing business in the Chicago area. Local No. 74 is a trade union whose

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members (approximately 700 journeymen lathers and lathers apprentices) perform substantially all of the lathing work in the Chicago area. Defendants Follett and Chouinard are lathing contractors doing business in the Chicago area, and the former has been president of the defendant Association since about January 1951, and the latter has been a member of the Association's Joint Board of Arbitration.

The complaint charged the defendants with conspiring to restrain interstate commerce in lathing materials shipped from outside the State of Illinois for installation in buildings in the Chicago area, and with conspiring to monopolize such commerce, in violation of Sections 1 and 2 of the Sherman Act.[2] On defendants' motions to dismiss the complaint for failure to state a cause of action, the district court held that the allegations did not show that defendants' conduct had an effect on interstate commerce sufficient to bring their conduct within the reach of the Sherman Act. The court accordingly entered a judgment dismissing the complaint as to all defendants.

The principal allegations of the complaint (admitted by the motions to dismiss) are as follows:[3]

Lathing contractors are independent entrepreneurs who undertake, pursuant to so-called "subcontracts" normally made with plastering contractors, to do the lathing work in a building

[2] Lathing materials installed by lathing contractors include gypsum lath, metal lath, cornerites, corner beads, channel irons and tie-wire (compl., par. 11).

[3] A copy of the complaint is attached hereto as Appendix B.

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(par. 6). They furnish the labor and part of the necessary lathing materials (the remaining materials being furnished by the plastering contractor), and they employ journeymen and apprentice lathers to perform the actual task of lathing (*ibid.*). In 1951, the 16 members of the Association [4] did over 60% of the lathing contracting business in the Chicago area, and the dollar volume of their business exceeded $5,000,000 (pars. 9, 10).

In most of the building construction in the Chicago area, plastering contractors enter into contracts with general contractors or building owners to perform the lathing and plastering work. They directly undertake the plastering work, but in most instances make a subcontract with a lathing contractor for installing the lathing materials, which they furnish to the lathing contractor. (Par. 8)

Lathing materials which the lathing contractors install are customarily purchased from building material dealers, who purchase the materials from out-of-state sources for resale to plastering contractors, who in turn deliver the materials to lathing contractors (par. 12). Substantial quantities of these purchases by building material dealers are made "to meet the regular anticipated demands" of plastering contractors, and materials so purchased "move in a continuous flow in interstate commerce" from out-of-state sources to the lathing contractors for installation (par. 13). Substantial

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[4] There are approximately 36 lathing contractors in the Chicago area (par. 9).

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quantities of lathing materials purchased by plastering contractors through dealers are shipped from points outside the state directly to the "job site" or to the plastering contractor's place of business for delivery to the lathing contractor for installation, and these materials also "flow in a continuous, uninterrupted stream from the points of origin * * * to the job site for installation" (par. 14).

Lathing contractors are "conduits" through which lathing materials shipped from outside the State of Illinois "are applied to their intended use" in the construction of buildings in the Chicago area. The lathing operation is an integral part of the building construction industry, which in the Chicago area had a value of about $500,000,000 in 1951, and lathing work is necessary to the completion of various other building operations, including plastering. Any restraint upon or interference with the performance of lathing work in the Chicago area restrains, affects and burdens the interstate flow of lathing materials used in the construction of buildings in that area. (Pars. 15-18)

For many years the defendants have been parties to a conspiracy to suppress competition among lathing contractors in the Chicago area and to restrict and exclude persons from engaging in this business, in restraint of interstate commerce in lathing materials, and to monopolize the interstate commerce incident to installation of these materials in buildings work in the Chicago area (par.

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19). As a part of this conspiracy, the defendants have agreed:

(a) to restrict and reduce the number of those who may engage in the lathing contracting business by excluding therefrom any person not approved by Local No. 74 and any person who has not been a member of the Local for five years, and by employing arbitrary racial and family-relationship standards to restrict the Local's membership;

(b) to eliminate competition among lathing contractors and to deprive plastering contractors of choice among lathing contractors by assigning designated lathing contractors to particular plastering contractors;

(c) to eliminate competition between lathing contractors and plastering contractors by freezing and reducing the number of plastering contractors permitted to employ members of Local No. 74; and

(d) that the Association make money payments to officers of Local No. 74 to induce them to use the power of the local in furtherance of defendants' conspiracy (par. 20).

In more detail, the conspiracy, in certain of its aspects, was carried out as follows:

Local 74, in curtailing the number of persons eligible to become members and to qualify as lathing contractors, admitted to membership as apprentices only relatives of its existing journeymen members, refused to permit any Negro to become an apprentice, and denied membership as journeymen lathers to Negro members of other locals of

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the International Union with which Local 74 is affiliated (par. 25).

To induce Local 74 to effectuate the conspiracy to restrict competition in the lathing business, the Association employed the Local's president at a substantial salary to act as managing director of a foundation established and financed by Chicago area lathing contractors for the purported purpose of promoting the lathing industry, made 75% of the Association dues available for payment to officers of Local 74, and designated the Association's promotion manager to make money payments to officers and business agents of the Local (par. 24).

Although prior to the conspiracy a number of plastering contractors had employed members of Local 74 to perform lathing work, with the inception of the conspiracy no additional plastering contractor was permitted to hire such members, with the result that at present only seven out of approximately 140 union plastering contractors in the Chicago area may directly employ journeymen lathers and the other 130 odd plastering contractors must subcontract their lathing work to lathing contractors (par. 23).

For many years each lathing contractor has registered with Local 74 the plastering contractor or contractors with whom he entered into lathing subcontracts, and all lathing contractors refrained from soliciting the business of a plastering contractor whose name had been registered by another lathing contractor (par. 26). The effect of this "assignment" plan was that no plastering contractor could

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obtain competitive bids from, or enter into subcontracts with, two or more lathing contractors (*ibid.*). Furthermore, a dissatisfied plastering contractor could not change its lathing subcontractor without securing the approval of Local 74, which approval was frequently denied (par. 27). In 1950, operation of this assignment plan became a disputed issue between plastering contractors and Local 74, and the Local then agreed to permit plastering contractors to obtain bids from and make contracts with more than one lathing contractor (par. 28). Shortly thereafter, however, the defendants agreed to continue the "registration" and "assignment" plan under the sponsorship of the Association (*ibid.*) Each number registered with the Association the plastering contractors whose accounts it "claimed", and it was agreed that no member would solicit or perform lathing contracts for a plastering contractor registered with the Association as a "recognized" account of another lathing contractor unless the latter consented to such competition (*ibid.*).

The conspiracy had the following effects among others: Competition among lathing contractors in the Chicago area has been restrained and the right to enter this business thwarted; the number of lathing contractors in this area has been reduced from about 95 in 1925 to about 36; the right to hire union journeymen lathers has been restricted; the cost of building construction in the Chicago area has been artificially enhanced; and interstate com-

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merce in lathing and related building materials has been unlawfully restrained (par. 29).

THE QUESTION IS SUBSTANTIAL

We submit that the district court, in holding the complaint insufficient to show restraint of interstate commerce, ignored various pertinent allegations, and also employed criteria which are in conflict with principles established by this Court. The unduly restrictive concept of the scope of the Sherman Act reflected in the district court's decision bears upon the Act's application to the many varying situations in which acts done within a state operate to thwart, burden or obstruct a flow of goods from without the state. The decision below is thus of general significance. Furthermore, this Court has never directly passed upon the question whether restrictive competitive practices on the part of those engaged in the building industry come within the reach of the Sherman Act. Since there is reason to believe that in many areas this industry is plagued by limitations on competition which the Sherman Act plainly bans provided interstate commerce "feels the pinch," the decision rendered on this appeal (and the related appeal in the *Plasterers Association* case) may be of wide economic import.

The court below, in concluding that the complaint charged only "local restraint and monopoly," stated, *inter alia,* that the plastering contractors are not charged with buying from "out-of-state dealers"; that the alleged restraints do not im-

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pinge upon building materials until they have "come to a state of rest in the State of Illinois," and "after all the buying and selling is completed"; and that there is no allegation of the effect of the conspiracy upon "interstate market price" or upon the "flow of materials into the State of Illinois," and no allegation that the defendants "intended to burden interstate commerce" or that their conspiracy does burden such commerce.

The complaint alleges that substantial quantities of the lathing materials installed in buildings in the Chicago area move in a continuous and uninterrupted flow from outside the state to those who perform the work of installation. This is a "statement of ultimate fact." *United States* v. *Chrysler Corp. Parts Wholesalers,* 180 F. 2d 557, 559 (C. A. 9).[5] The building or buildings in which the materials are to be installed are the destined end of the interstate journey,[6] and an interstate movement, once begun, continues at least until it "reaches the point where the parties have originally intended that the movement should finally end." *Binderup* v. *Pathe Exchange, Inc.,* 263 U. S. 291, 309. While lathing materials usually pass through the hands of building material dealers before reaching the

[5] In that case the sole issue before the appellate court was whether the allegations of the indictment showed that the conspiracy which was charged had a sufficiently close relation to interstate commerce to bring the conspiracy within the prohibitions of the Sherman Act.

[6] The materials are purchased for this end by plastering contractors, and if the plastering contractor had subcontracted the lathing work to a lathing contractor, the materials are delivered to such contractor on their receipt by the purchasing plastering contractor.

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ultimate purchaser, the interstate movement is not brought to an end by this break in the physical continuity of transit. Cf. *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 569.

But in this case it is not necessary to determine the precise point, under the facts alleged, at which interstate commerce in lathing materials comes to an end. It is well settled that restraints operating immediately upon operations which are intrastate violate the Sherman Act "if the necessary effect is to stifle or restrain commerce among the states"; in that event "it does not matter how local the operation which applies the squeeze." *United States* v. *Women's Sportswear Mfg. Association*, 336 U. S. 460, 464. Where there is a regular inflow of goods to meet an established demand, interference with those engaged in local distribution directly incident to the incoming flow illegally restrains the incoming interstate commerce and violates the Sherman Act. *Local 167* v. *United States*, 291 U. S. 293, 297. The facts in the instant case are similar to those held to show a violation of the Sherman Act in *United States* v. *General Motors Corp.*, 121 F. 2d 376, 401-402, (C.A. 7), certiorari denied, 314 U. S. 618, where the court held that restraint upon the movement of cars from automobile dealers to members of the consuming public "necessarily" affected the antecedent interstate movement of cars from the factory to the dealer.

The complaint alleges (par. 18) that restraint upon and interference with the performance of lathing work in the Chicago area "necessarily and

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directly restrains and affects the interstate flow of lathing materials" and constitutes "a direct and substantial burden and restraint upon the interstate flow" of these materials. These allegations are more specific than the effect allegations held to be adequate in *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Company,* 334 U.S. 219, 226. Moreover, in the present case there are pertinent supplementary allegations. It appears from the facts set forth that lathing operations are essential to continuance of an interstate movement in lathing materials which is both regular and substantial. It further appears that defendants, by their conspiracy, limited and controlled lathing operations. On the facts alleged, defendants excluded from these operations all but a small minority of plastering contractors; required all other plastering contractors (some 95% of the total) to subcontract this work to lathing contractors; eliminated all competition for such subcontractors by permitting each plastering contractor to deal with only a particular, designated lathing contractor;[7] and limited the number of lathing contractors.

Congress, in the Sherman Act, fully exercised its commerce power. *United States* v. *Frankfort Distilleries, Inc.,* 324 U. S. 293, 298. It is therefore clear that, upon appropriate allegations, the Sherman Act reaches the conduct charged in the instant case. The commerce power authorizes Congress to

[7] In the *Women's Sportswear* case, *supra,* the limitation on competition was much less drastic since it merely confined jobbers to a choice among the stitching contractors who were members in good standing of the defendant Association.

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prohibit interference with the carrying out of a single contract to do the electrical work in a building if the contractor annually purchases $55,000 of raw materials from outside the state. *National Labor Relations Board* v. *Denver Bldg. & Const. Trades Council,* 341 U. S. 675, 683-684.

We note, finally, that since the pleadings charge conspiracy between a labor union and a non-labor group (the Association and various lathing contractors), defendants' acts are not within labor exemptions given by the Clayton Act. *Allen Bradley Co.* v. *Local Union No. 3,* 325 U.S. 797.

We submit that the question presented by this appeal is substantial and of public importance.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

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APPENDIX A

Filed July 20, 1953

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 53 C 125

JOSEPH HOWARD, BERNARD HOWARD and PAUL HUGH, on their behalf, and on behalf of all those persons similarly situated, PLAINTIFFS

vs.

LOCAL 74 of the WOOD, WIRE AND METAL LATHERS, INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; ELMER LINDSAY, Personally and as President of Local 74; WILLIAM EBY, Personally and as Financial Secretary-Treasurer of Local 74; WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, A. F. OF L.; WILLIAM MCSORELY, Personally and as General President of Wood, Wire and Metal Lathers A. F. of L.; EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY, an Illinois corporation; HARVEY D. FOLLETT; EDWARD D. CHOUINARD, DEFENDANTS

Criminal Action No. 52 CR 331

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; LOCAL NO. 74 OF WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; HARRY D. FOLLETT; AND EDWARD D. CHOUINARD, DEFENDANTS

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Civil Action 52 C 1639

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; ET AL., DEFENDANTS

Criminal Action No. 52 CR 332

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; JOURNEYMEN PLASTERERS' PROTECTIVE AND BENEVOLENT SOCIETY, LOCAL NO. 5, O. P. & C. F. I. A.; AND BYRON WILLIAM DALTON, DEFENDANTS

Civil Action No. 52 C 1640

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; ET AL., DEFENDANTS

MEMORANDUM

All five causes under consideration present similar operations in the building trades of the Chicago area, which operations are alleged to violate the Sherman Act. A summary analysis of the operations and business practice of the lathing industry can serve to present the operations of the plastering industry because they are similar. Since the legal question in both trades is identical, this discussion relative to the lathing industry is equally applicable to the plastering trade and one opinion will serve for all of the cases at bar.

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The defendants, the Employing Lathers Association of Chicago and the labor union known as Local No. 74 of the Wood, Wire and Metal Lathers and its officers, Harry D. Follett and Edward D. Chouinard, were indicted in the case at bar for violation of Sections One and Two of the Sherman Act. All of the defendants were residents of the State of Illinois and conducted and carried on their business in the State of Illinois and the acts of conspiracies charged against them were all performed in the State of Illinois.

The indictment charges that there are thirty-six lathing contractors in the Chicago area, an area consisting of the counties of Cook, Du Page and Lake, all three of which are Illinois counties. All thirty-six of these contractors did about Eight Million Dollars worth of business in 1951. Sixteen of these lathing contractors, who were members of the defendant Employing Lathers Association of Chicago, did about Five Million Dollars worth of work in 1951 in the said three Illinois counties, which amounted to about sixty per cent of all of the lathing business in those counties.

The indictment charged that generally contracts for lathing are executed by building contractors with plastering contractors who agree, under the terms of such contracts, to deliver lathing material and furnish labor for the lathing work required by the building contractor. The plastering contractor then enters into a sub-contract with the lathing contractor for the installation of lathing material in the building being constructed and said lathing material is furnished to said sub-contractors by the plastering contractor.

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A major part of all lathing material used in lathing contracts in the said three Illinois counties is sold by manufacturers and dealers from other states to local material dealers in Illinois for resale in Illinois. They, in turn, sell said lathing materials to plastering contractors in Illinois, who then use such materials, or cause lathing contractors to use them, in constructing the work on buildings in Illinois, which buildings remain in Illinois and do not again enter into the stream of interstate commerce.

There are three methods of delivery used by the building material suppliers who live and conduct their business in Illinois. Those methods are as follows:

First: A substantial amount of lathing materials is purchased from out-of-State sources by building material dealers in response and pursuant to prior orders placed with said dealers by plastering contractors, which is subsequently delivered to the plastering contractors and redelivered to the lathing contractors for installation.

Second: A substantial amount of lathing materials is purchased by plastering contractors from building material dealers in Illinois, who have, in turn, secured said material from out-of-State sources in order to meet regular, anticipated demands of plastering contractors. In other words, the purchase is made from building material dealers who stock pile plastering material.

Third: A substantial amount of lathing materials is purchased by plastering contractors from building material dealers who order the same from

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manufacturers and dealers and other sources outside of the State of Illinois, who, in turn, ship the same directly to the job site or place of business of said contractors in the said three Illinois counties for delivery to the lathing contractors for performance of lathing contracting work in said three Illinois counties, commonly known as the Chicago area. It is charged that said lathing materials, so sold, and installed in Illinois, flow in a continuous and uninterrupted stream from the points of origin in states other than the State of Illinois, to the job site for installation and use in the buildings and other structures in Illinois.

For the purpose of ruling upon this motion before the Court, all of the allegations stand admitted and every well pleaded fact is assumed to be true.

The plastering contractor is not charged with buying from out-of-State dealers but from building material dealers in Illinois, who are not named in the indictments or complaints herein.

The indictment alleges the existence of an agreement between the Association and Local 74, whereby lathing contractors are excluded from engaging in the area trade, unless they are first approved by Local 74. Such approval is dependent upon a five year union membership, which, in turn, is restricted and reduced pursuant to arbitrary racial and family relationship standards. Disapproved contractors cannot employ union lathers; approved lathing contractors are assigned to designated plastering contractors. It is alleged that this practice has suppressed competition among the lathing contractors in the area, and has effected

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a monopoly among the few approved lathing contractors, and that it is an unreasonable restraint upon trade and commerce.

There is no allegation of any effect of the alleged intrastate conspiracy upon the interstate market price of the building material involved. There is no allegation of any discrimination or anything that would cause a purchaser to buy building material in Wisconsin or in Chicago or in California. There is no allegation of fact of its effect upon the flow of materials into the State of Illinois. This is wholly a charge of local restraint and monopoly by local labor and a local lathers association, all confined to three counties in the State of Illinois. The alleged restraints do not become associated with the building material or ultimate cost of buildings until after the building materials have been purchased and have come to a state of rest in the State of Illinois, so far as the stream interstate commerce is concerned.

Whatever restraint there is occurs after all the buying and selling is completed. The flow of commerce is not unlike the flow of water and the statute is designed to prevent a break in the pipes through which interstate commerce flows across state lines and to the consumer. The statute is not designed to apply to the use the consumer makes of the articles of commerce after the consumer has completed his purchase, unless the consumer creates a new product and a new stream of commerce that again crosses state boundary lines.

The Sherman Act was not intended by Congress to interfere with local affairs, even though they might be unfair and malicious and economically unsound. This indictment is brought specifically

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and is limited to and deals only with the Sherman Act. It is purely conjectural whether the practice with which the defendants are charged may remotely and indirectly affect the flow of commerce. It might be that it has reduced the number of buildings that are built in three counties in Illinois; it might be it has driven building and industry elsewhere; but that is not alleged in the indictment.

There is no allegation showing these defendants intended to burden interstate commerce by this alleged conspiracy. There is no allegation of fact that it does so burden interstate commerce.

If this were a situation where portable houses were being built, and there was an additional allegation that after the houses were built, instead of being attached to the real estate and becoming part and parcel of the local Illinois community, where all the acts are alleged to have been committed; and instead of being affixed to real estate remaining in Illinois they were loaded on box cars and sent to other states then there would be such interference with interstate commerce as would support these indictments and complaints herein.

In the light of the authorities, it is the view of this Court indictments and complaints herein do not state an offense or cause of action under the anti-trust laws.

This Court cannot extend the law by interpretation, because, if this Court did extend it in this case, then every step in commerce from the beginning of manufacture to and including the final consumption, and each and every act of every kind thereafter that might affect the quantity or price

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of articles of commerce would come under the Sherman Act. This Court is bound by the language of the Sherman Act and its subsequent judicial interpretations. It would be presumptuous of a District Court to extend the statute in question to cover the facts alleged in the instant indictment by breaking a new path into the wilderness of commerce law, when the higher Courts have already circumscribed pathways that clearly indicate that the jurisdiction of this Court over interstate commerce ends at the same time and place where interstate commerce itself ends.

Appropriate orders in accord with this opinion will be entered in each case forthwith.

(S.) J. S. PERRY,
Judge.

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APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 52 C 1639

Equitable Relief Sought Filed: July 31, 1952

UNITED STATES OF AMERICA, PLAINTIFF

v.

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; LOCAL NO. 74 OF WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; HARRY D. FOLLETT; AND EDWARD D. CHOUINARD, DEFENDANTS

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. Sec. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing

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violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of that Act (15 U.S.C. Secs. 1, 2).

2. The defendants Employing Lathers Association of Chicago and Vicinity, Local No. 74 of Wood, Wire and Metal Lathers International Union of Chicago, Illinois and Vicinity, Harry D. Follett, and Edward D. Chouinard, as hereinafter alleged, maintain offices and transact business within the Eastern Division of the Northern District of Illinois and are found therein.

II

Defendants

3. The following are named as defendants herein:

(a) Employing Lathers Association of Chicago and Vicinity, a corporation organized and existing under the General Not-for-Profit Corporation Act of the State of Illinois. Said corporation, sometimes hereinafter referred to as the "Association," is a trade association whose membership consists of 16 lathing contractors doing business in the Chicago area. The Association transacts business in Chicago, Illinois, and its records are kept by its secretary at 3354 N. Long Avenue, Chicago, Illinois. The Association, which was incorporated in 1945, is the successor to prior unincorporated associations of lathing contractors located in the Chicago area.

(b) Local No. 74 of the Wood, Wire and Metal Lathers International Union of Chicago,

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Illinois and Vicinity, sometimes hereinafter referred to as "Local 74." The said Local 74 is an unincorporated trade union or association of individuals chartered by and operating under the authority of the Wood, Wire and Metal Lathers International Union. Its membership is composed of approximately 700 journeymen lathers and apprentices, who perform practically all of the lathing work in the Chicago area. It has its place of business and offices at 205 W. Wacker Drive, Chicago, Illinois.

(c) Harry D. Follett, an individual residing at 1015 N. Lombard Avenue, Oak Park, Illinois. The said Harry D. Follett is a lathing contractor doing business in the Chicago area, has been president of the defendant Association from approximately January 1951 to the date of the filing of this complaint, and was vice-president of the defendant Association from approximately August 1945 to January 1951.

(d) Edward D. Chouinard, an individual residing at 8028 S. Luella Avenue, Chicago, Illinois. The said defendant Edward D. Chouinard is a lathing contractor, has been a member of the Association for many years, and has been a member of its Joint Board of Arbitration.

4. Whenever in this complaint it is alleged that any corporate defendant or unincorporated association did any act or thing, such allegation shall be deemed to mean that such act was done by the of-

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ficers, employees, agents, or representatives of such corporate defendant or unincorporated association.

III

Co-Conspirators

5. Numerous lathing contractors, including those who are members of the defendant Association, were co-conspirators in the combination and conspiracy hereinafter alleged.

IV

Definitions

6. As used herein, the term "lathing contractor" means an independent entrepreneur engaged in the business of entering into and performing so-called "subcontracts" for the lathing of buildings. Such subcontracts are normally made with plastering contractors. Lathing contractors customarily enter into contracts based upon the furnishing of labor and part of the lathing materials by the lathing contractor, and the furnishing of the remainder of the lathing materials by the plastering contractor. Lathing contractors function as managers and owners of businesses and employ journeymen and apprentice lathers to perform the lathing operations which precede the application of the coats of plaster.

7. As used herein, the term "Chicago area" means that area within the recognized jurisdiction of Local 74. Such area includes most of Cook County and portions of Du Page and Lake Counties, Illinois.

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V

Nature of Trade and Commerce

8. In most building construction in the Chicago area, contracts for lathing and plastering operations are generally executed with plastering contractors, who agree therein to furnish the plastering and lathing materials and to have the same installed. In performing said contracts, the plastering contractors sell and distribute plastering and lathing materials, and perform themselves the plastering work. In most instances, the plastering contractor enters into a subcontract with a lathing contractor for the installation of lathing materials in the building, said lathing materials being furnished by the plastering contractor to the lathing contractor. The contract of the plastering contractor for the sale and installation of plastering and lathing materials is not performed until the lathing materials are installed by the lathing contractor. The installation of lathing materials by lathing contractors is essential to the performance of contracts by plastering contractors for the sale of said materials to general contractors or building owners.

9. There are approximately 36 lathing contractors in the Chicago area who are engaged in the business of performing lathing contracts for the installation of lathing materials in buildings. The dollar volume of the lathing contracts entered into by the lathing contractors in the Chicago area in 1951 amounted to more than $8,000,000.

10. Approximately 16 of the above referred to lathing contractors in the Chicago area are mem-

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bers of the defendant Association. The dollar volume of lathing contracts entered into by lathing contractors who are members of the defendant Association totaled in excess of $5,000,000 in 1951, or over 60% of the total amount of lathing contracting business in the Chicago area in that year.

11. The materials, herein referred to as lathing materials, used and installed by lathing contractors in the performance of lathing contracts, include gypsum lath, metal lath, cornerites, corner beads, channel irons, and tie-wire. A major part of all of said lathing materials used in the performance of lathing contracts in the Chicago area is produced in States other than the State of Illinois, and is shipped in interstate commerce from said States into the Chicago area for sale and installation therein.

12. Customarily, the lathing materials installed by lathing contractors in the Chicago area are purchased from building material dealers in the area, who purchase said materials from out-of-State sources for resale to plastering contractors, who in turn deliver the same to lathing contractors for installation. Substantial quantities of said lathing materials are purchased from out-of-State sources by said building material dealers in response and pursuant to prior orders placed with said dealers by plastering contractors, and, upon receipt of said materials from said out-of-State sources, said materials are then delivered to the plastering contractors who ordered the same, and are then delivered by said plastering contractors to the lathing contractors for installation.

13. Substantial quantities of lathing materials purchased by plastering contractors in the Chicago

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area are obtained from building material dealers who have in turn secured said materials from out-of-State sources in order to meet the regular anticipated demand of said plastering contractors. Said lathing materials purchased by such dealers from out-of-State sources to meet the regular anticipated demands of said plastering contractors move in a continuous flow in interstate commerce from said out-of-State sources through the dealers and plastering contractors to the lathing contractors for installation.

14. Substantial quantities of lathing materials purchased by plastering contractors through building material dealers are obtained from manufacturers, dealers, or other sources outside the State of Illinois who ship directly to the job site or place of business of said contractors in the Chicago area for delivery to the lathing contractor for the performance of lathing contracting work. Said lathing materials so sold and installed in the Chicago area flow in a continuous, uninterrupted stream from the points of origin in States other than the State of Illinois to the job site for installation and use in buildings and other structures in the Chicago area.

15. Consumers of lathing materials ordinarily do not install said materials, and this service is customarily performed by lathing contractors, who employ and supervise skilled labor for this purpose. The service performed by lathing contractors in the Chicago area in the installation of lathing materials is an integral part of, and necessary to, the movement in interstate commerce of lathing materials which are manufactured in States other than the State of Illinois and which are distributed

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and installed in the Chicago area. Thus, lathing contractors are conduits through which lathing materials manufactured and shipped from States other than the State of Illinois are applied to their intended use in the construction of buildings in the Chicago area. The function performed by said lathing contractors in the installation of said lathing materials in building is essential to the interstate flow of said materials, since said lathing materials are of no use to the ultimate purchaser until they are installed in buildings. Said lathing materials flow in a continuous stream from their points of origin in States other than Illinois to their final installation and use in buildings in the Chicago area.

16. The lathing operation is an integral part of the building construction industry, which, in the Chicago area in 1951, engaged in new building construction and remodeling to the value of approximately a half billion dollars, and the performance of said lathing operation is necessary to the completion of other building operations including plastering and interior painting and decoration, and the installation of plumbing fixtures, heating and air conditioning outlets and vents, electrical outlets and fixtures, flooring and interior wood trim, and window and door sashes. A substantial part of all of said building materials and appurtenances is produced in States other than Illinois and is sold and shipped in interstate commerce from said States to the Chicago area for distribution and use in buildings in said area.

17. The installation or use in buildings of said building materials and appurtenances is an in-

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tegral part of, and necessary to, the movement in interstate commerce of said materials manufactured in States other than the State of Illinois, and which are distributed, sold and installed in the Chicago area. Substantial quantities of said building materials and appurtenances flow in a continuous uninterrupted stream from their points of origin in States other than Illinois to the places of installation and use in buildings in the Chicago area.

18. Any restraint upon or disruption in or interference with the performance of lathing work in the Chicago area necessarily and directly restrains and affects the interstate flow of lathing materials, and also constitutes a direct and substantial burden and restraint upon the interstate flow of all of the hereinbefore referred to building materials and appurtenances entering into the construction of buildings in the Chicago area.

VI

The Combination and Conspiracy

19. For many years past, the exact beginning date to the plaintiff unknown, and continuing to the date of the filing of this complaint, the defendants and their co-conspirators, and others to the plaintiff unknown, have engaged in an unlawful combination and conspiracy to suppress competition among the lathing contractors in the Chicago area, and to restrict and exclude persons from engaging in the lathing contracting business in said area, in unreasonable restraint of the hereinbefore described trade and commerce among the several States, and to monopolize the installation in the

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Chicago area of lathing materials flowing in interstate commerce as hereinbefore described, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890 (15 U.S.C. Secs. 1, 2), commonly known as the Sherman Act. Said offenses are continuing and will continue unless the relief hereinafter prayed for in this complaint is granted.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, the co-conspirators, and others to the plaintiff unknown, the substantial terms of which have been and are that they agree:

(a) To restrict and reduce the number of lathing contractors permitted to engage in the lathing contracting business by:

(1) Excluding any person from becoming a lathing contractor who has not first secured the approval of Local 74;

(2) Denying the right to become a lathing contractor to any person who has not first been a member of Local 74 for five years;

(3) Denying to any person, who has not first obtained the approval of Local 74 to become a lathing contractor, the right to employ members of Local 74;

(4) Restricting and reducing, by arbitrary racial and family relationship standards, the number of apprentice and journeymen lathers accepted into membership in Local 74;

(b) To assign particular plastering contractors to certain designated lathing contractors, thereby eliminating the competition

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among lathing contractors for the business of said plastering contractors, and depriving said plastering contractors of their right to choose the lathing contractors with whom they wish to do business;

(c) That the defendants eliminate competition in the lathing field between lathing contractors and plastering contractors by freezing and reducing the number of plastering contractors who are permitted to hire members of Local 74;

(d) That the defendant Association and co-conspirators effectuate payments of money to officers of defendant Local 74 to induce them to utilize the power of that Local in furtherance of the conspiracy.

21. During the period of time covered by this complaint and for the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and their co-conspirators by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, and more particularly have done, among others, the following acts and things.

22. In furtherance of the conspiracy to restrict competition in the lathing field, the defendant Local 74 has adopted, maintained, and enforced restrictions governing entry into the lathing contracting business in the Chicago area. Thus, Local 74 requires persons desiring to enter the lathing contracting business first to make application to and receive the approval of Local 74 as a prerequisite to entering the business. Persons who have failed to receive the approval of Local 74 have been denied

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the right to hire Local 74 journeymen lathers and apprentices, and thereby have been excluded from the lathing contracting business in the Chicago area. Local 74 further refuses to consider or approve applications except from persons who have been journeymen members of Local 74 for five years. As a result, no person who has not been a journeyman member of Local 74 is permitted to engage in the lathing contracting business in the Chicago area.

23. Prior to the beginning of this conspiracy, a number of plastering contractors in the Chicago area hired journeymen lathers who were members of Local 74 to perform lathing work rather than subcontract such work to lathing contractors. With the inception of this conspiracy, and in furtherance of it, the defendant Local 74 instituted the practice of refusing to permit additional plastering contractors to hire journeymen lathers. As a result of this practice, there has been a reduction in the number of plastering contractors permitted to hire lathers directly, and at the present time there are only seven union plastering contractors in the Chicago area out of approximately 140 who may thus hire journeymen lathers directly. The remainder must subcontract their lathing to lathing contractors.

24. To encourage Local 74 to effectuate the restriction and reduction of competition in the lathing contracting business, the defendant Association has from time to time paid sums of money to officers of Local 74. The Association made seventy-five per cent of its dues available for such payments, and designated its Promotion Manager to

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pay sums of money and other considerations tc officers and business agents of Local 74. The Association furthermore employs the President of Local 74 at a substantial salary to act as Managing Director of a foundation which has been established and is financed by Chicago area lathing contractors for the purported purpose of promoting the lathing industry.

25. Pursuant to the conspiracy charged herein, Local 74 has adopted and maintained restrictive membership rules and policies which curtail the number of persons eligible to become members of Local 74 and to qualify as lathing contractors. Thus, it restricts admission of apprentices intc membership into Local 74 to those persons who are relatives of journeymen lathers who are already members of Local 74. It has also arbitrarily excluded applicants of the negro race from becoming apprentices or from being admitted to membership as journeymen lathers. Local 74 has alsc refused to accept into membership journeymen lathers of the negro race who have attempted to transfer memberships to Local 74 from out-of-State lathers' unions affiliated with the same International Lathers Union with which Local 74 is affiliated.

26. For many years each lathing contractor registered with Local 74 the plastering contractor or contractors for whom such lathing contractor performed lathing subcontracts. Upon such registration, it was understood by all other lathing contractors that the registered plastering contractors were "assigned" to the lathing contractor who had registered their names. Thereafter, all other lath-

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ing contractors in the Chicago area refrained from soliciting the business of such "assigned" plastering contractors and refrained from submitting bids to, or performing lathing work for, such assigned plastering contractor. The operation of the above described "assignment" plan resulted in each plastering contractor in the Chicago area being confined to one lathing contractor and being denied the right to obtain competitive bids from two or more lathing contractors. Furthermore, each plastering contractor was prohibited from entering into subcontracts with more than one lathing contractor.

27. Under the operation of the foregoing registration system, whenever a plastering contractor sought to change its lathing subcontractor, such plastering contractor had first to make application to, and receive the approval of, defendant Local 74. In many instances, Local 74 denied to such dissatisfied plastering contractors the right to change lathing subcontractors. As a result of such plan of "registration" and "assignment," competition among lathing contractors was suppressed and plastering contractors were denied the right to enter freely into business arrangements with lathing contractors of their choice.

28. Operation of the above described plan of "assignment" caused dissatisfaction among plastering contractors and constituted one of the issues in dispute between plastering contractors and Local 74 during the fall of 1950. As a result of this dispute, Local 74 entered into an agreement with the plastering contractors recognizing the right of such plastering contractors to obtain bids from

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more than one lathing contractor and to contract for lathing work with more than one lathing contractor. Shortly thereafter, however, the defendants reached a mutual understanding whereby the so-called "registration" and "assignment" plan was to be continued under the sponsorship of the defendant Association rather than of Local 74. Thus, the members of the Association agreed not to solicit or perform lathing contracts for a plastering contractor who had been "registered" with the defendant Association by another lathing contractor as his "recognized" account, unless such other lathing contractor consented to such competition. Each member of the defendant Association agreed to "register" with the Secretary of the Association the names of those plastering contractors "claimed" by such lathing contractor as his accounts.

VII

Effects of the Conspiracy

29. The effects of the aforesaid combination and conspiracy, among others, have been as follows:

(a) The number of lathing contractors in the Chicago area has been reduced from approximately 95 in 1925 to approximately 36 at the present time and the right of union contractors to hire union journeymen lathers and apprentices has been unlawfully restrained and impeded;

(b) Competition among lathing contractors in the Chicago area has been unlawfully restrained and the traditional American right of a person to enter into a business of his own

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choice without hindrance of illegal restraints of trade has been impaired and thwarted;

(c) The cost of building construction in the Chicago area has been artificially and illegally increased;

(d) The public has been denied the benefits in the construction industry in the Chicago area which would result from competition free from the illegal restraints in the lathing phases of the building construction industry;

(e) Interstate trade and commerce in lathing and related building materials has been unlawfully restrained.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the aforesaid combination and conspiracy entered into by the defendants and all the acts done pursuant thereto constitute an unlawful restraint of interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendants, and each of them, and their directors, officers, and agents, and employees, be enjoined from continuing, renewing, or reviving the unlawful combination and conspiracy hereinbefore alleged, or any combination or conspiracy having a similar purpose or effect.

3. That defendants and each of them be enjoined from requiring persons desiring to enter the lathing contracting business to apply to and secure the approval of Local 74 and that Local 74 be enjoined from adopting or maintaining any policy, rule, or by-law having the purpose or effect of preventing

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or restricting any prospective lathing contractor from entering such business; provided, however, that nothing in the judgment entered in this cause shall prevent or prohibit Local 74 from requiring persons who wish to employ Local 74 members to agree to abide by union contract requirements as to wages, hours of employment, and other legitimate terms of working conditions.

4. That the defendant Local 74 be enjoined from adopting, maintaining, or enforcing any rule or restriction having the purpose or effect of preventing or restricting members of Local 74 from engaging in the lathing contracting business.

5. That Local 74 be enjoined from prohibiting, restricting, or preventing any person, including but not limited to any plastering contractor, from employing or hiring members of Local 74 to perform lathing work so long as such person will agree to abide by union contract requirements as to wages, hours of employment, and other legitimate terms of working conditions.

6. That Local 74 be enjoined from continuing, establishing, or maintaining any policy, rule, or requirement relating to admission of journeymen or apprentices into membership in Local 74 which is based upon race, religion, national origin, or family relationship to an existing member of the Local and which may have the effect of limiting the number of those eligible to enter the lathing contracting business.

7. That the defendants, and each of them, be enjoined from establishing, continuing, maintaining, fostering, or participating in any plan, program, or understanding to allocate, register, or

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"assign" plastering contractors or lathing jobs to particular lathing contractors.

8. That the Court enter such orders with respect to the rules, by-laws, and charter of the defendant Association and of the defendant Local 74 as is necessary to prevent the restrictive practices herein alleged and to carry out and enforce the terms of the judgment entered in this cause.

9. That the plaintiff have such other, further, and different relief as the nature of the case may require and the Court may deem appropriate in the premises.

10. That the plaintiff recover the costs of this suit.

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